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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,557	03/21/2005	Pascal Bruna	Q86514	6383
23373 7590 04/19/2007 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER GANEY, STEVEN J	
			ART UNIT	PAPER NUMBER
			3752	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

87

Office Action Summary	Application No.	Applicant(s)	
	10/528,557	BRUNA ET AL.	
	Examiner	Art Unit	
	Steven J. Ganey	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 15-18 and 19 are objected to because of the following informalities: In claims 15-18, line 1, the numeral "1" should be changed to --12-- in order to provide proper claim dependency from claim 12, not claim 1, which provides support for "spray mechanism", "support", "actuator element", and "opening device". In claim 15, line 2, the phrase "in an axial of the body" is indefinite since it raises the question of an axial what? of the body. In claim 19, line 1, the word "element" should be changed to --means-- in order to provide proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, line 2, the sentence "an axially-displaceable rod that co-operates with the first plug of said reservoir" is indefinite since it is not clearly recited how the rod cooperates with the first plug. The rod cooperates to do what exactly with the first plug? There is a structural cooperative relationship missing between the rod and the first plug.

Art Unit: 3752

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 8, 12 and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward '667.

Ward '667 discloses a fluid spray device comprising all the featured elements of the instant invention, note specifically body 1; reservoir 90; spray means/mechanism/rod 34; actuator means/element comprising a lateral actuator element/pivot tab 15; opening means/device/needle 29; receiver means/support/snap fastener 2/10/31; and lateral access means comprising a window 3.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 5, 7, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward '667.

Ward '667 discloses all the featured elements of the instant invention except for the two diametrically-opposite windows; the reservoir comprising first and second plugs; and the device

Art Unit: 3752

being structured to be a nasal spray device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide two diametrically-opposite windows, since such a modification would merely be the duplication of parts and the apparatus of Ward '667 would work equally as well with one window or two diametrically-opposite windows, the additional window further facilitating the insertion of the reservoir.

As to claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a reservoir having a first and second plugs with the fluid being disposed between the two plugs, since such reservoirs are well known in the capsule/cartridge art and the apparatus of Ward '667 would perform equally as well with the one plug as shown or with two plugs having the fluid being disposed between the two plugs and the piercing means 29 piercing the second plug.

As to claims 13 and 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to structure the device of Ward '667 to be a nasal spray device since the device would be capable of dispensing a dose of fluid into a nasal cavity by turning the device sideways and placing the discharge orifice 20 adjacent the nasal cavity.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward '667 in view of Fuchs et al.

Ward '667 discloses all the featured elements of the instant invention except for the lateral access means including a removable cover. Fuchs et al shows a fluid spray device having a removable cover 66. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a removable cover as part of the lateral access means of

Art Unit: 3752

Ward '667, as taught by Fuchs et al, since such a modification would protect the discharge orifice from contamination and protect the device from damage.

Allowable Subject Matter

9. Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sterne and Zellweger show capsule/cartridges/reservoirs having first and second plugs with the fluid between the plugs. Ward '784, Kelley, Jr., Andvig and Stevenson et al show spray devices with lateral actuator element/pivot tabs.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 7:00-5:00; M, Tu, W and Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3752

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjg
4/9/07


STEVEN J. GANEY
PRIMARY EXAMINER
4/9/07